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In the

Supreme Court of the United States

OCTOBER TERM, 1949

Case No. 508

MINNEAPOLIS STREET RAILWAY COMPANY,
Appellant,

vs.

CITY OF MINNEAPOLIS, HUBERT H. HUMPHREY, Jr., as Mayor of the City of Minneapolis, CHARLES C. SWANSON, as City Clerk of City of Minneapolis, GLADYS E. MILLER, as City Treasurer of City of Minneapolis, and O. J. TURNER as City Comptroller of City of Minneapolis,
Appellees.

Appeal from the Supreme Court of Minnesota.

APPELLANT'S BRIEF

(In Answer to Appellees' Motion to Affirm or Dismiss.)

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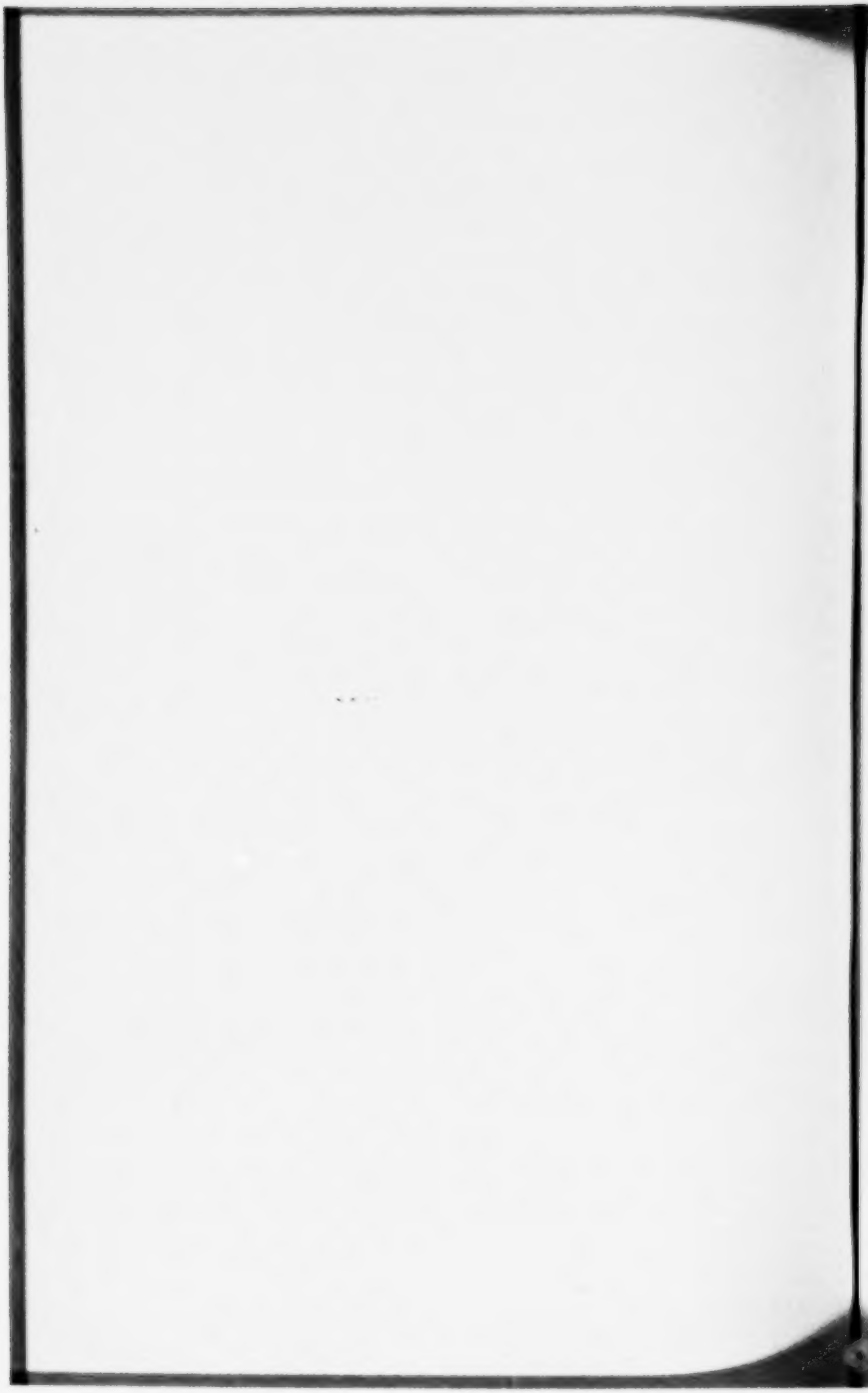
INDEX

	Page
Argument	1
A declaratory judgment deciding a constitutional question is appealable	2
The judgment determining the constitutional question involved, is final	4
A substantial federal question is involved	6

AUTHORITIES CITED

Cases:	
Aetna Life Ins. Co. of Hartford, Conn. v. Haworth, 300 U. S. 227 (1937)	3
City of Minneapolis v. Minneapolis Street Railway Co., 215 U. S. 417 (1910)	6, 7
Detroit v. Detroit Citizens St. Ry. Co., 184 U. S. 368 (1902)	7
Liberty Warehouse Co. v. Grannis, 273 U. S. 70 (1927)	2, 3
Louisville v. Cumberland Telephone Co., 224 U. S. 649 (1912)	6
Minneapolis Street Ry. Co. v. City of Minneapolis, —— Minn. ——, 40 N. W. (2d) 353 (1949)	6
Parker v. Morrill, 106 U. S. 1 (1882)	5
Railway Company v. Philadelphia, 101 U. S. 528 (1879)	7
Railway Company v. New Orleans, 143 U. S. 192 (1892)	7
Republic Natural Gas Co. v. State of Okla., 334 U. S. 62 (1948)	5
Richfield Oil Corp. v. State Board of Equalization, 329 U. S. 69 (1946)	5
St. Louis v. United Railways Co., 210 U. S. 266 (1908)	7
Warehouse Co. v. Tobacco Growers, 276 U. S. 71 (1928)	2
Statutes:	
36 M. S. A., Section 555.01	4, 5
15 M. S. A., Section 220.01 through 220.26	4
28 U. S. C. A. (Revised 1948), Chap. 81, Sec. 1257, Subd. 2	5
28 U. S. C. A. (Revised 1948), Chap. 113, Sec. 2101, Subd. c	6



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IN THE

Supreme Court of the United States

OCTOBER TERM, 1949

CASE NO. 563

MINNEAPOLIS STREET RAILWAY COMPANY,
Appellant,

vs.

CITY OF MINNEAPOLIS, HUBERT H. HUMPHREY, JR., as Mayor of the City of Minneapolis, CHARLES C. SWANSON, as City Clerk of City of Minneapolis, GLADYS E. MILLER, as City Treasurer of City of Minneapolis, and O. J. TURNER as City Comptroller of City of Minneapolis,
Appellees.

Appeal from the Supreme Court of Minnesota.

APPELLANT'S BRIEF

(In Answer to Appellees' Motion to Affirm or Dismiss.)

ARGUMENT

In determining whether or not the judgment of the Supreme Court of Minnesota is appealable to this Court, the Appellant is faced with two perplexing problems:

1. When a question concerning the Constitutionality of an ordinance is raised and decided, in an action under a Declaratory Judgment Act, can that judgment be appealed to this Court?

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2. Is the declaration of the Minnesota Court with respect to the Constitutional question involved a final judgment under the interpretation placed on 28 U. S. C. A. (Revised 1948), Chapter 81, Section 1257, Subdivision 2?

A Declaratory Judgment Deciding a Constitutional Question Is Appealable.

In two cases decided by this Court,

Liberty Warehouse Co. v. Grannis, 273 U. S. 70 (1927);

Warehouse Co. v. Tobacco Growers, 276 U. S. 71 (1928);

this general statement was made:

"This Court has no jurisdiction to review a mere declaratory judgment."

(*Warehouse Co.,* supra, p. 89.)

In *Liberty Warehouse Co.,* supra, the plaintiff sought a declaratory judgment, under the Declaratory Judgment Law of Kentucky, in the Federal District Court. At that time, there was no Federal Declaratory Judgment Act in existence and this Court held:

1. That a legislative act of Kentucky, establishing a procedural remedy could not extend the jurisdiction of a Federal Court;
2. That there were no adverse litigants and no actual claim was involved;
3. That plaintiff was seeking a determination of abstract questions or issues for the purpose of invoking advice without real parties or a real case;
4. That there was no "case or controversy" presented to the Federal Court and hence the Court was without jurisdiction.

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In the *Warehouse Co.* case, supra, the defendant interposed a counter-claim in a Kentucky state court which, among other things, sought a declaration of defendant's rights under the Kentucky Declaratory Judgment Law. The counter-claim was stricken by the lower court. It was held that under local practice, the Kentucky Court could refuse to exercise its power to declare rights and duties and, therefore, no Federal right was impaired by the lower court's action in this regard.

It would seem that this Court meant that no case or controversy involving a Constitutional question was presented under the state of the pleadings in these cases, rather than the general proposition that no judgment in a declaratory judgment action can be appealed to this Court, for, in *Aetna Life Ins. Co. of Hartford, Conn. v. Haworth,* 300 U. S. 227 (1937), this Court held that an action under the Federal Declaratory Judgment Act did involve a "case or controversy" within the meaning of the Federal Constitution.

The case at bar involves threatened action by Appellees to enforce the 1946 Ordinance against Appellant, which Appellant claims to be in violation of and repugnant to the Constitution of the United States and, therefore, although this is an action for a declaratory judgment, we believe "a case or controversy" within the meaning of the Federal Constitution, is presented and that this Court has jurisdiction to entertain the appeal.

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The Judgment Determining the Const'tutional Question Involved, Is Final.

The provision of the Minnesota Declaratory Judgment Act pertinent to this appeal is:

36 *M. S. A.* 555.01, which provides as follows:

> "555.01. Courts to Construe Rights. Courts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree."

From the language of this statute, it would seem that each right declared by the Supreme Court of Minnesota, whether affirmative or negative in character, would have the force and effect of a final judgment.

In the case at bar, three controverted questions were presented to the Minnesota Court:

1. Whether or not the Brooks-Coleman Act, (15 M. S. A. 220.01 through 220.26) withdrew the licensing power from the City Council of Minneapolis;
2. Whether or not the 1946 Ordinance impaired the obligation of the franchise between the Appellant and the city in derogation of Appellant's rights under the State and Federal Constitutions;
3. Whether or not the license fee imposed in the 1946 Ordinance was arbitrary and unreasonable.

The Minnesota District Court answered number (1) in the affirmative and did not pass on the other questions. The Minnesota Supreme Court answered number (1)

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and number (2) in the negative and remanded question number (3) to the District Court, for its determination.

In requesting this Court to hear the appeal, we are not unmindful of the numerous decisions of the Court defining "final judgment," among which are:

Republic Natural Gas Co. v. State of Okla., 334 U. S. 62 (1948);

Richfield Oil Corp. v. State Board of Equalization, 329 U. S. 69 (1946);

Parker v. Morrill, 106 U. S. 1 (1882).

This Court stated, in *Parker v. Morrill*, supra:

> "It has not always been easy to decide when decrees in equity are final within this rule, and there may be some apparent conflict in the cases on that subject, but in the common law courts the question has never been a difficult one." (page 4.)

We have here neither a case at common law nor equity, but rather a type of action statutory in nature in which a declaration of rights is sought instead of a judgment or decree. By its very wording 36 *M. S. A.* 555.01 implies that a declaration by the Minnesota Court as to any question of right presented, is a final judgment as to that right. The only question in the instant case involving the Federal Constitution, is question number (2) and, since the Supreme Court of Minnesota declares that the 1946 Ordinance, whether reasonable or unreasonable, does not impair the obligation of contract, it would seem that such declaration is a final judgment within the definition of 28 U. S. C. A. (Revised 1948), Chapter 81, Section 1257, Subdivision 2, and hence the appeal is properly presented at this time.

We have been unable to find any authority on this precise question and to forego an appeal at this time would mean that Appellant would lose its right to be heard at a later date, if its interpretation of "final judgment" with

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respect to an action for a declaratory judgment is correct, inasmuch as an appeal from a final judgment must be taken within three months after the entry of such judgment (28 U. S. C. A. (Revised 1948), Chapter 113, Section 2101, Subdivision c.).

A Substantial Federal Question Is Involved.

Appellees in their opposing statement cite numerous cases at pages 5 and 6 in support of the accepted principle that a city cannot contract away its police power. From this principle Appellees argue that the city could not under any circumstances limit the amount of license fee to be charged Appellant. It is interesting to note that Appellees contradict their own contention by citing other cases at pages 7 and 8 wherein it is held that if the language of a contract clearly expresses a city's intention to limit the amount of license fee that the same can be done.

There can be no dispute but that the original grant or franchise and all amendments thereto constitute a valid and subsisting contract between the Appellant and the city and ipso facto between the Appellant and State of Minnesota.

City of Minneapolis v. Minneapolis Street Railway Co., 215 U. S. 417 (1910).

Minneapolis Street Ry. Co. v. City of Minneapolis, — Minn. —, 40 N. W. (2d) 353 (1949).

It is Appellant's contention that the wording of the 1890 Ordinance imposing a license fee of $25 per streetcar clearly expresses the Appellant's intention to charge only a $25 license fee per streetcar during the period of the franchise bringing this appeal within the principles announced in

Louisville v. Cumberland Telephone Co., 224 U. S. 649 (1912);

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City of Minneapolis v. Minneapolis St. Ry. Co., 215 U. S. 417 (1910);

Detroit v. Detroit Citizens St. Ry. Co., 184 U. S. 368 (1902);

wherein it was held that an ordinance of a city which attempted to abrogate or nullify any of the rights or privileges in a grant or franchise would be an impairment of contract prohibited by Article I, Section 10, of the Federal Constitution.

The precise question to be presented in this appeal was discussed by the Court in *St. Louis v. United Railways Co.*, 210 U. S. 266 (1908), wherein it is stated:

> "The principles involved in this case have been the subject of frequent consideration in this court, and while it can be no longer doubted that a state or municipal corporation, acting under its authority, may deprive itself by contract of the power to exercise a right conferred by law to collect taxes or license fees, at the same time the principle has been established that such deprivation can only follow when the state or city has concluded itself by the use of clear and unequivocal terms. The existence of doubt in the interpretation of the alleged contract is fatal to the claim of exemption. The section of the Missouri constitution and the laws, to which we have referred, clearly show that while the franchise of the corporation essential to its existence is derived from the state, the city retains the control of its streets, and the use of them must be acquired from the municipal authorities upon terms and conditions which they shall fix. *Blair v. Chicago*, 201 U. S. 400" (pages 273-74).

In that case as well as the cases of *Railway Company v. Philadelphia*, 101 U. S. 528 (1879); *Railway Company v. New Orleans*, 143 U. S. 192 (1892); the Court held that although a city could set a limit on license fees by contract, that under the facts of each of those cases the

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city's intention was not clearly expressed, and therefore there was no impairment of the obligation of contract.

Many of the points argued in the section of Appellees' statement entitled "No Substantial Federal Question is Presented by the Attempted Appeal" are arguments that should be properly contained in Appellees' brief if this Court takes jurisdiction, and to answer those points would require a complete argument on the merits of the contentions presented which should be argued in the main briefs and not at this time.

We respectfully submit that the question of whether or not the 1946 Ordinance impairs the obligation of contract between Appellant and the city is a substantial Federal question, and this Court should take jurisdiction of the appeal.

Respectfully submitted,

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